

EXHIBIT 16
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House Bill 762

An Act Revising the Montana False Claim Act

Hearing before the House Judiciary Committee February 23, 2007

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Good morning Madam Chair and members of the committee, for the record my name is Jeff Buska and I am the Administrator of the Quality Assurance Division of the Montana Department of Public Health and Human Services. I am here today to testify in support of House Bill 762 regarding the proposed changes to the Montana False Claims Act.

First I want to thank Representative Julie French for sponsoring this bill, and I would like also to take this opportunity to thank Ali Bovington and Catherine Truman from the Department of Justice who helped us with this process and their expertise.

This bill was created through the House Human Services committee action on HB 77 that was requested by the Department of Public Health and Human Services. The department had originally prepared changes under HB 77 regarding the False Claim Act with the intention to implement several provisions related to enhancing the False Claims Act that was passed in the 2005 legislative session. Those changes in HB 77 were intended to take advantage of a financial opportunity created under the Federal Deficit Reduction Act (DRA) of 2005. That financial opportunity is a 10% incentive on Medicaid recoveries, which I will explain in a moment.

The reason we are here today to discuss HB 762 is because the provisions for the False Claims Act were amended out of HB 77 and put into this committee bill. The reason this was put into a committee bill is because we, DPHHS and the Department of Justice, needed to make substantial changes to the language that the department had proposed in HB 77.

Just prior to the hearing on HB 77 the Department received some information from the federal Department of Health and Human Services, Office of the Inspector General (OIG), regarding information of their review of other States requests to have their false claims acts benchmarked against the federal false claims act requirements. After reviewing this information, it was clear to us that what the department had proposed was not going to meet those requirements and qualify Montana for this 10% financial incentive under the DRA, like we had intended. We noted that several States did not meet those requirements because the wording of their False Claims Act was not quite in line with the federal requirements; and what we had in HB 77 was not going to correct the wording of our FCA to meet those requirements. Therefore, we needed to amend HB 77 to make the necessary changes; and those changes were substantially different than what we had originally proposed. I discussed this situation with Representative Stoker who chairs the Human Services Committee and he referred it to a subcommittee for review and consideration.

It was at this meeting of the subcommittee where Representative French suggested an amendment to HB 77 that would amend out the FCA provisions from HB 77 and create a committee bill to address the False Claims Act changes. This amendment was passed by the Human Services Committee and the committee bill was created. That is how we get here today to discuss this bill, HB 762.

HB 762 includes the specific language changes to the Montana False Claims Act that we believe will comply with the enumerated requirements published by the U.S. Office of Inspector General (OIG). These requirements provide specific criteria that Montana's False Claims Act must contain before the OIG can determine that Montana qualifies for the 10% financial incentive regarding Medicaid recoveries, as provided under the Deficit Reduction Act.

So what is this 10% financial incentive? The financial incentive created under the DRA is the opportunity to save 10 percentage points on the Federal Medical Assistance Percentage (FMAP), from Medicaid recoveries that result from legal action brought pursuant to a False Claims action.

The Medicaid program is a Federal State partnership to provide health care coverage for needy Montanans. When the Medicaid program pays for healthcare services the federal government contributes approximately 70 cents on the dollar and the state approximately 30 cents on the dollar for those services. The 70% is also often referred to as FFP (Federal Financial Participation). When the state Medicaid program recovers any overpayments from providers we are required to send the feds their share back to them, i.e. their 70%.

With the passage of this bill, and upon approval from the OIG, the financial incentive decreases the Federal Medical Assistance Percentage (FMAP) by 10 percentage points for Medicaid recoveries brought under a false claims action. Therefore, the amount we will be required to send back is approximately 60% instead of 70%. Please note that this incentive is only for legal actions brought pursuant to the Montana False Claim Act. It does not pertain to other recoveries identified in the normal course of business in the administration of the Medicaid Program. I have provided you a handout (fact sheet) that includes an example as a reference.

As you can see, this can result in significant savings for Montana depending on the amount of the action brought under the Act. This bill does not impact or change the Montana Medicaid program in any way; it just creates an opportunity for Montana to take advantage of the financial incentive for the collection of overpayments under the False Claims Act. I encourage you to recognize this opportunity by considering a due pass for House Bill 762.

Thank You! That concludes my testimony and I will be available for any questions.